

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DONELL THOMAS HAYNIE,

Plaintiff,

v.

CASSANDRA K. SYSOUVANH,

Defendant.

No. 2:23-cv-01077-KJM-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se in this civil rights action that was removed from state court on June 5, 2023. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 23, 2023, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations. *See* Obj. One, ECF No. 8; Obj. Two, ECF No. 9. Plaintiff argues defendant's notice of removal was untimely and requests the court remand the case back to state court. Obj. One at 5.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

1 Additionally, the court finds defendant's notice of removal was timely. Service of the complaint
2 was effected on defendant on May 4, 2023. *See* Notice of Removal ¶ 5, ECF No. 1; Objs. One at
3 3. Thus, the deadline to file a notice of removal fell on Saturday, June 3, 2023. *See* 28 U.S.C.
4 §1446(b). Because the last day to file a notice of removal fell on a Saturday, the deadline was
5 extended to Monday, June 5, 2023 when defendant filed the notice of removal. Fed. R. Civ. P.
6 6(a)(1)(C) ("When the period is stated in days . . . include the last day of the period, but if the last
7 day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next
8 day that is not a Saturday, Sunday, or legal holiday."); *see* E.D. Cal. L.R. 101 ("Days' are
9 calculated pursuant to Fed. R. Civ. P. 6[.]").

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The findings and recommendations filed June 23, 2023, are adopted in full.
12 2. The PREA violation alleged in the complaint is dismissed without leave to amend for
13 failing to state a claim upon which relief may be granted.
14 3. The remaining Eighth Amendment sexual assault claim against defendant is dismissed
15 without prejudice as duplicative of the pending second amended complaint in *Haynie v. Esquerra*,
16 Case No. 2:22-cv-02204-DB (E.D. Cal.).
17 4. The Clerk of the Court is directed to close this case.

18 DATED: August 25, 2023.

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21 CHIEF UNITED STATES DISTRICT JUDGE
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